72

# SUPREME COURT OF THE UNITED STATES.

## No. 43.

THE UNITED STATES, APPELLANT,

VERSUS

HEIRS OF JOHN FORBES.

APPEAL FROM THE SUPERIOR COURT OF EAST FLORIDA.

INDEX.


| | Original. | Print. |
|---|---|---|
| Petition to the Court, | 1 | 3 |
| Answer of United States Attorney, | 4 | 4 |
| Replication of Claimant, | 9 | 7 |
| Leave to amend Petition, | 10 | 8 |
| Amendment to Petition, | 11 | 8 |
| *Evidence* and *Testimony* offered in this case. | | |
| No. 1.—Memorial of John Forbes, for grant, | 14 | 10 |
| Order of Governor directing Comptroller to report, | 15 | 11 |
| Report of Comptroller, | 15 | 11 |
| Grant for 10,000 acres, | 16 | 11 |
| No. 2.—Certificate and plat of survey of 7,000 acres | 17 | 12 |
| No. 3.—Certificate and plat of survey of 3,000 acres, | 18 | 12 |
| No. 4.—Commission to examine Mrs. Sophia Flemming, | 19 | 13 |
| Interrogatories to Mrs. Flemming, | 21 | 14 |
| Answers of Mrs. Flemming, | 21 | 15 |
| Cause submitted to the Court, | 23 | 16 |
| Decree of the Court, | 24 | 16 |
| Appeal to Supreme Court, | 25 | 17 |
| Citation of Appeal and return, | 26 | 17 |


*Langtree and O'Sullivan, Print.*

Before the Honorable Robert Raymond Reid, Judge of the Superior Court for the district of East Florida, and specially authorized by law to receive and adjudicate claims and titles to lands in the district of East Florida.

Be it remembered, that on the twentieth day of May, in the year of our Lord one thousand eight hundred and twenty-nine, Thomas Dalcom, executor of the estate of John Forbes, deceased, by John Lee Williams, his attorney, brought and filed in the clerk's office of the said court his petition or claim to certain land therein mentioned; which said petition or claim is in the words and figures following, to wit:

*Petition to the Court.*

To the Honorable Joseph L. Smith, Judge of the Superior Court for the Eastern District of Florida:

The petition of Thomas Dalacom, executor of the estate of John Forbes, deceased, respectfully showeth:

That your petitioner, as executor aforesaid, claims title to ten thousand acres of land, seven thousand of which were surveyed on the waters of Little St. Mary's river in the [then] district of Nassau, and within the district of East Florida aforesaid on the twenty-third day of October, in the year of our Lord one thousand eight hundred and sixteen, by George J. F. Clarke, as will more fully appear, reference being had to his certified plat, herewith exhibited, bounded as follows, to wit: the first line commencing at a pine tree near Spell's Swamp; running thence north ten degrees west two hundred and forty-six chains to a pine; thence south eighty degrees west two hundred and forty-six chains to a pine; thence north eighty degrees east to the place of beginning. The other tract of three thousand acres, situated in Cabbage Swamp, bounded as follows, to wit: the first line runs south eighty degrees west one hundred and ninety-five chains, second line south 45° west thirty-five chains, third line west seventy-seven chains; fourth line north one hundred and five chains, fifth line north 80° east two hundred and ninety-nine chains, sixth line south one hundred and five chains to the place of beginning.

The above described grant was made to Don John Forbes, during his lifetime by Governor Kindelan, in lieu of fifteen thousand acres surrendered by the said Forbes to the King of Spain, as will more fully appear by reference to the documents herewith exhibited, bearing date the eighth day of July, in the year of our Lord one thousand eight hundred and fourteen.

And your petitioner further shows, that the grant here exhibited was given to the attorney of the said John Forbes, to present to the board of land commissioners for East Florida under the act of Con-

gress of the eight of May, in the year of our Lord one thousand eight hundred and twenty-two, but, by some mistake, the survey of the tract of seven thousand acres only was presented to the board, and by them recommended to Congress for confirmation, while the survey of three thousand acres was lost or mislaid.

In consideration whereof, your petitioner prays that the validity of his title to the above mentioned tracts of land may be enquired into by this honorable court, and that a copy of this petition, with a citation, may be served on Thomas Douglas, Esquire, the attorney for the United States in the said district, and that the United States be made a party to the said suit. And that on a final hearing being had in the cause a decree may be entered confirming the lands in question to the present claimant.

And your petitioner will ever pray, &c.

JOHN LEE WILLIAMS,
*Attorney for petitioner.*

A copy of the above petition, with a citation thereto annexed, was delivered to the marshal of this district, to serve on the attorney of the United States for the same district, and the return of the said marshal thereon, is in the words and figures following, to wit: "Served copy on Thomas Douglas, Esq., United States attorney, 25th of May, 1829."

"WATERS SMITH, *Marshal.*"

And afterwards, to wit, on the twentieth day of July, in the year of our Lord one thousand eight hundred and twenty-nine, Thomas Douglas, Esquire, United States attorney for the district of East Florida, brought and filed in the clerk's office aforesaid his answer to the said petition; which said answer is in the words and figures following, to wit:

*Answer of United States Attorney.*

| | |
|---|---|
| The United States of America, *ads.* Thomas Dalcom, Executor. | Superior Court, November Term, in the year 1829. |

The answer of Thomas Douglas, United States attorney for the district of East Florida, to the petition or bill of complaint of Thomas Dalcom, who claims as the executor of the estate of John Forbes, deceased.

The said attorney, in the name and for and on behalf of the same United States, saving and reserving to them, now and at all times hereafter, all and all manner of benefit of exception to the manifold errors, defects, and irregularities in the said petition or bill of complaint contained, for answer thereunto or unto so much thereof, as it is material and necessary for them to answer unto, answereth and saith: That whether any such grant of ten thousand acres of land was made to the said Don John Forbes, during his lifetime by Governor Kindelan, in lieu of fifteen thousand acres surrendered by the said Forbes

to the King of Spain, at the time and in manner and form as the said Thomas Dalcom has in his said petition or bill of complaint alleged and set forth, or whether any such survey was made by the said Andres Burgevin, of the said seven thousand acres of the said land, as is in said petition or bill of complaint, stated, set forth, and described, or whether the said Thomas Dalcom is executor of the estate of John Forbes, deceased, or whether, if he is executor, as aforesaid, he has a right to claim the said land, this respondent does not know, and cannot therefore either admit or deny the same, but respectfully prays this honorable court that the said Thomas Dalcom may be required to show and prove on the hearing of this cause, the making and execution of the said supposed grant of land, and of the said surveys, if any such were ever made, which is by no means admitted, and also that he may be required to exhibit in this honorable court the last will and testament of the said John Forbes, deceased, and show and prove his right, if any he has, to claim the said tract of land as executor of the said John Forbes, deceased, as aforesaid, if any such will exists, or he has any such right as aforesaid, and all the matters and things in the said petition or bill of complaint alleged and set forth, as they are therein stated, according to law, and the usages of courts of equity.

And this respondent avers that if any such grant of land was made by the said Governor Kindelan to the said John Forbes, as is in the said petition or bill of complaint alleged, it was made contrary to and in violation of the laws, ordinances and royal regulations of the Government of Spain, which were in force in the said province of East Florida at the time when the said supposed grant is alleged to have been made as aforesaid, providing for the granting of lands in its provinces, of which said provinces the said province of East Florida was then one, and without any power or authority on the part of the said Governor Kindelan to make it, and that if it was made as aforesaid, it was never approved by the said Government of Spain, and that it was and is wholly null and void.

And this respondent further saith, that the said fifteen thousand acres which it is alleged in said petition or bill of complaint, was surrendered by the said Forbes, and in lieu of which the said supposed grant is alleged to have been obtained as aforesaid, was also granted, if granted at all, contrary to and in violation of the laws, ordinances and royal regulations aforesaid and without any power or authority from the Government of Spain aforesaid on the part of the person who made the same, to make it.

And this respondent further avers, that at the the time when the said supposed grant of ten thousand acres aforesaid is alleged to have been made as aforesaid, no power had been conferred upon the said Governor Kindelan by the said Spanish Government to make grants of land in East Florida, of the magnitude and description of the one now claimed and described by the said Thomas Dalcom in this suit; and this respondent farther prays that the said Thomas Dalcom may be required to show and prove on the hearing of this cause the specific powers which had been conferred [if any such powers had been

conferred] upon the said Governor Kindelan by the Spanish Government aforesaid, to make grants of land in East Elorida, and particularly that he may be required to show and prove the specific powers under which the said Governor Kindelan claimed to act in making the said supposed grant, if any such grant was ever made by him; and farther, that the said Thomas Dalcom may be required to show and prove, upon the hearing of this cause as aforesaid, by whom the said fifteen thousand acres of land was pretended to have been granted, and when and to whom the said supposed grant of fifteen thousand acres of land purported to have been or was pretended to have been granted, and the specific powers under which the person who made the same [if any such grant was ever made] claimed to act in making the said supposed grant—and this respondent farther saith, that if any such grant of fifteen thousand acres of land was made, it was never approved by the said Government of Spain, and that it was also entirely null and void.

And this respondent farther saith, that at the time when the said supposed grant of ten thousand acres of land is alleged to have been made, and also at the time when the said fifteen thousand acres of land were granted, if they were granted at all, it was and for a long space of time had been the fixed and settled policy of the said Government of Spain to parcel out its colonial domain with reference to the sole objects of increasing the population of its provinces, and of benefitting its indigent subjects, and that, according to that policy, grants for the purpose of speculation were never approved or tolerated by the said government, and that the said grant of ten thousand acres of land was obtained by the said John Forbes [if it was obtained at all] for purposes of speculation only, and that the said grant of fifteen thousand acres of land was in like manner a mere object of speculation.

And this respondent farther saith, that if the aforesaid grants or either of them, were made by competent authority, the said John Forbes, in his lifetime wholly failed and neglected to occupy, cultivate, or improve the said tracts of land or either of them, and that the said Thomas Dalcom has equally failed and neglected to occupy, cultivate, or improve the said tract of ten thoasand acres of land since the death of the said John Forbes, and that the said John Forbes in his lifetime by his failure and neglect aforesaid, lost all right and title, if any he ever had, to the said tracts of land, or either of them, and that the said Thomas Dalcom has no right to claim the said tract of ten thousand acres—and this respondent suggests that if the said John Forbes had any grant for the said ten thousand acres of land, it was made since the twenty-fourth day of January, in the year one thousand eight hundred and eighteen, and that it is consequently rendered null and void, by the provision of the latter clause of the eighth article of the treaty, which was made and concluded on the twenty-second day of February, in the year of our Lord one thousand eight hundred and nineteen, by and between the said United States and the Government of Spain aforesaid, as will more fully appear by reference to the aforesaid treaty, which this respondent prays leave to introduce and read on the hearing of this cause.

And this respondent admits that the claim of the said John Forbes, for seven thousand acres of said land was presented to the board of commissioners in said petition or bill of complaint mentioned, and that it was by the said board of commissioners recommended to Congress for confirmation.

And this respondent farther saith, that the claim of the said John Forbes to three thousand acres of said land was never presented to the said board of commissioners, as appears by the showing of the said Thomas Dalcom himself, and that therefore this court can exercise no jurisdiction over it, as against the said United States.

And now, having fully answered all the matters and things in the said petition or bill of complaint contained and alleged, the said attorney prays that the said United States may be hereof discharged, and that their reasonable costs and charges by them in and about the defence of this suit paid, laid out and expended, may be adjudged and decreed to them, &c.

THOS. DOUGLAS,
*United States Attorney, &c.*

And afterwards, to wit, on the thirtieth day of July, in the year of our Lord one thousand eight hundred and thirty, the said claimant, by his said attorney, brought and filed in the clerk's office aforesaid, his replication; which is in the words and figures following, to wit:

*Replication.*

SUPERIOR COURT OF THE EASTERN DISTRICT OF FLORIDA,
*St. Johns county, to wit:*

The replication of Thomas Dalcom, executor of the estate of John Forbes, deceased, to the answer of Thomas Douglas, Esquire, attorney for the United States, defendant.

And this respondent saving and reserving to himself all and all manner of advantage of exception, which may be had and taken to the manifest errors and uncertainties and insufficiencies in the answer of the said defendant, for replication thereunto, says, that he does and will ever maintain and prove his said bill to be true, certain and sufficient, in the law to be answered unto by the said defendant, and that the answer thereto is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant, without that, that any other matter or thing in the said answer contained material effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove, as this honorable court shall order and direct, and humbly prays, as in and by his said bill he hath already prayed.

JOHN LEE WILLIAMS,
*for Claimant.*

And afterwards, before the superior court for the district of East Florida, holden at the court-house in the city of St. Augustine, at the term of July, in the year of our Lord one thousand eight hundred and thirty-five, to which term this cause had come by regular continuance, to wit, on Thursday, the seventh day of said term, and the twenty-third of said month, the following entry of record was made in this cause, to wit:

*Leave to amend petition.*

THOMAS DALCOM, Executor, &c., *vs.* The UNITED STATES OF AMERICA. } Land claim, 10,000 acres.

This day, came as well the counsel for the said claimant, as the counsel of the United States—and on motion of the claimant's counsel, leave is given him to amend the petition filed in this case.

And afterwards, to wit, on the twenty-seventh day of July, in the year of our Lord one thousand eight hundred and thirty-five, the said claimant, by his said attorney, under the leave of the court above set forth, brought and filed in the clerk's office of said court, his amended petition; which is in the words and figures following, to wit:

*Amendment to petition.*

JANE DEPEYSTER and SOPHIA DALCOM, *vs.* The UNITED STATES. } Land claim for 10,000 acres.

To the honorable Robert Raymond Reid, Judge of the Superior Court for the district of East Florida, authorized by law to receive and adjudicate claims to lands within said district.

The petition of Jane Depeyster, widow of Deypester, deceased, and of Sophia Dalcom, widow of Thomas Dalcom, deceased. The said Jane and Sophia being the only children, and the only legal heirs of John Forbes, deceased, formerly of said East Florida, respectfully showeth unto your honor, that as such children and heirs, they claim title to ten thonsand acres of land lying in said district, and within the jurisdiction of this honorable court, to wit, as by the said grant in court, to be shown will appear, in the district of Nassau river, as the same was known and called at the date of said grant.

And your petitioners further show, that their title to said land is derived from and by a grant or concession thereof made by Governor Kindelan unto the said John Forbes, on the 28th day of July, A. D. 1814—said lands being thereby granted and conveyed unto the said John Forbes, absolutely, without condition and in fee simple—as by the said grant herewith marked A, and which your petitioners pray may be taken as a part of this petition will fully appear—the said land having been granted to the said John Forbes on the day and

year last above stated, by the said Governor Kindelan, in lieu of fifteen thousand acres of land previously granted, and by the said John Forbes abandoned and surrendered to the King of Spain, as by the memorial of the said John Forbes herewith will appear.

And your petitioners further show that said ten thousand acres of land, granted to the said John Forbes, as above set forth, were surveyed unto him, in his life time, in said district of Nassau river, by George J. F. Clarke, surveyor general of the province of East Florida, to wit: seven thousand acres thereof on the waters of the little St. Mary's, the lines thereof being according to the certificate and plat of survey herewith, marked B, said certificate of survey dated the twenty-third day of October, A. D. 1816; and three thousand acres thereof in Cabbage Swamp, the lines thereof according to the certificate and plat of survey herewith, marked C, said certificate of survey, dated 20th October, A. D. 1816.

And your petitioners further show that the said John Forbes, while in life, submitted his claim for said ten thousand acres of land for examination to the board of land commissioners, for the said district of East Florida, appointed under and in virtue of the act of Congress, enacted for that purpose, and dated the eighth day of May, A. D. 1822.

And your petitioners further show that the said land above claimed is embraced by the late treaty between Spain and the United States, of the 22d of February, 1819; that it has not been decided, or finally settled, under the provisions of the act of Congress of the United States, entitled "An act supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida," passed the 23d day of May, 1828, or of any of the acts, to which the last recited act is supplementary, or under the provisions of any other act.

And your petitioners further show that their said claim contains a greater quantity of land than the said commissioners were authorised to decide, and above the quantity confirmed by the said act of Congress of the 23d of May, 1828; and that the said claim has not been reported by the said commissioners, appointed under any of the aforesaid acts of Congress, or by any other, or by the register and receiver, acting as such commsissioners, under the several acts of Congress of the United States, in such case made and provided, as ante dated or forged; and that the said claim has not been annulled by the aforesaid treaty; nor by the decree of the King of Spain ratifying the same; and your petitioners further say that the said John Forbes, since he filed said claim before the said board of land commissioners for examination as above in this petition set forth, has departed this life, and that your petitioners as above set forth being his only children and his only heirs are entitled both at law and in equity to said tract of ten thousand acres of land.

Wherefore they pray that the validity of their said claim may be enquired into and decided by this honorable court, and that in pursuance of the act of Congress of the United States, for that purpose made and provided, the United States may be made a party defendant to this petition, and that process forthwith issue against Thomas

Douglas, Esquire, the attorney for the United States in and for the said district of East Florida, according to the provisions of the act of Congress above referred to, in this case made and provided.

And your petitioner will ever pray, &c.

JOS. L. SMITH,
*Attorney.*

Evidence and testimony offered and read in this cause at the hearing thereof, and numered from *one* to *four* inclusive, to wit:

No. 1.

Offered and read by Claimant.

TRANSLATION.

*Memorial for Grant.*

His Excellency the Governor:

I, Don Juan Forbes, partner of the firm of Juan Forbes & Co., successors of Panton, Leslie & Co., merchant of this province, with the greatest respect appears before your Excellency, and says; That the said firm of Panton, Leslie & Co., obtained in the year one thousand seven hundred and ninety-nine a grant of fifteen thousand acres of vacant lands in the district of St. John, in order to employ their slaves in the agriculture and for grazing their cattle. as is seen by the certificate annexed, but after a short time they were under the necessity to abandon them as being of an inferior quality, the same thing happened to which, which frequently happens in this province where the planter does not every time succeed in his choice of land, which he perceives only when a sorrowful experience shows him his error, and as it has been for many preceding years that the government in attention to similar misfortunes, and to the expenditures and losses which have been incurred, has had the goodness to permit the taking up other vacant lands, provided the prior grant be abandoned. Finding myself situated in the same case, and wishing to establish a rice plantation, which production we have been, until the present time under the necessity to import from foreign parts: I, from this moment, abandon the said fifteen thousand acres of land in behalf of his Majesty, [whom may God have in his holy keeping,] supplicating him to admit it, and in lieu thereof to grant me an equivalent in the district of Nassau river. Therefore I supplicate your Excellency be pleased to order that my former abandonment be received, and in consequence, that ten thousand acres be granted to me in said district of Nassau river, the survey of which I will produce, as soon as the tranquility of the province enables me to execute it.

Which favor, &c.

JUAN FORBES.

*Order to Comptroller.*

St. Augustine, on the twenty-seventh day of July, one thousand eight hundred and fourteen. Let the Comptroller inform on the subject.

KINDELAN.

*Report of Comptroller.*

Whereas, in this province lands are distributed gratis, no record has been entered in the comptroller's office of lands so given, nor to whom given, for which reason it is not known what lands have been given, and what remain vacant. Therefore nothing can be said on the subject about which information is required: it appears, however, that it is useful to promote the culture of rice, to which, as the interested party alleges, the lands granted to him on the seventh of August, one thousand seven hundred and ninety-nine, for the express purpose of pasturage, as appears by the annexed certificate of the then notary of government, Juan de Pierra, are not adapted.

St. Augustine of Florida, on the twenty-eighth of July, one thousand eight hundred and fourteen.

MANUEL LOPEZ.

*Grant.*

DECREE.

St. Augustine, on the twenty-eight of July, one thousand eight hundred and fourteen. It is permitted to this interested party to give his formal abandonment of the fifteen thousand acres of land, comprehended in the document annexed to the petition, and in lieu of them the ten thousand are granted to him, without prejudice to a third party, for the objects solicited, in the district or bank of the river Nassau; and in consequence, let the corresponding certificate be issued in his behalf from the secretary's office, in order that it may serve him as a title in form, and it will be the duty of the party to produce the plat and demarcations in the proper time, and let the expedient be registered in the secretary's office.

KINDELAN.

On the date, a copy of this expedient was given to the interested party; date as above.

AGUILAR.

St. Augustine 20th June, 1829. I certify that the preceding is a correct translation of the Spanish document annexed.

A. GAY.

*Translator and Interpreter of the Superior Court.*

No. 2.

Offered and read by Claimants.

TRANSLATION.

*Certificate and plat of Survey of* 7000 *Acres.*

I, Don George Clarke, lieutenant of the militia of the city of St. Augustine, and by the Government appointed surveyor general of the city and of the province thereof, do certify that I have surveyed and delineated for Don Juan Forbes seven thousand acres of land, at the head of the river, little St. Mary's, or St. Mary river, said land being the complement of the ten thousand acres which were granted to him in absolute property, and they are conform to the following plot, and to the copy thereof which I keep in the book of surveys under my charge

Fernandina, 23d October, 1816.

JORGE J. F. CLARKE.

[Here is to follow the annexed plat of survey of 7000 acres.]

St. Augustine 8th June, 1830. I certify that the preceding translation and the within plot, are conform to their Spanish original annexed.

A. GAY,
*Translator and Interpreter of the Superior Court.*

No. 3.

Offered and read by Claimants.

TRANSLATION.

*Certificate and plat of Survey.*

I, Don Jorge Clarke, &c., do certify that I have surveyed and delineated for Don Juan Forbes, three thousand acres of land in Cabbage Swamp, in part of ten thousand acres which were granted to him by the Government, in absolute property, and they are conform to the following plat and to the copy thereof which I keep in the register of surveys under my charge.

Fernandina, 20th October, 1816.

JORGE J. F. CLARKE.

[Here is to follow the annexed plat of survey of 3,000 acres.]

St. Augustine 8th of June, 1830. I certify that the preceding translation and the within plot are conform to the Spanish original thereof annexed. A. GAY,

*Translator and Interpreter of the Superior Court.*

No. 4.

Offered and read by Claimants.

*Commission to Examine Mrs. Soph. Flemming.*

TERRITORY OF FLORIDA, *County of St. Johns.*

By his Honor Robert Raymond Reid, Judge of the Supreme Court for the Eastern District of Florida.

To Kingsley B. Gibbs, Esquire, Greeting:

Whereas, there is a certain controversy now depending, in the superior court for said county, between the heirs of John Forbes, claimants, and the United States, defendant: and whereas Mrs. Sophia Flemming is a material witness in said matter of controversy and cannot attend our said court, in person, without manifest inconvenience.

Now, know ye, That we, reposing special trust and confidence in your prudence and fidelity, have appointed you, and you or any two of you are hereby authorised and required to cause the said Sophia Flemming personally to come before you, and after being duly sworn, to examine him, them, or either of them, concerning the said matter of controversey, agreeably to the interogatories hereto annexed, and the answers to the same being plainly and distinctly written you are to send the same, closed up under your hands and seals, to our said court, now sitting, together with this writ.

[SEAL.] Witness Kingsley B. Gibbs, clerk of our said court, this 11th day of September A. D. 1838, and of the Independence of the United States the sixty-third year.

K. B. GIBBS, *Clerk.*

*Instruction to Commissioner.*

Before proceeding to take the examination of the witness, the commissioner must make oath, or solemn affirmation that he will faithfully execute the commission in the case therein named. The commissioner must then take down the oath, or solemn affirmation of the witness that she will well and truly answer the interrogatories which shall be put to her by the commissioner. The commissioners will then proceed to take down in writing the answers of the witness to each and every part of each interrogatory—and he is requested to be careful that no part of any of the interrogatories shall remain

unanswered, and the answers of the witness must be signed by her.

When all the testimony is taken the commissioner must write at the bottom, "as commissioner named in the annexed commission, I do certify, that after being sworn myself, I did examine the witness named in said commission under oath, and her answers to the interrogatories annexed to said commission, are truly and correctly herein set forth."

After which the commissioner must attach all the papers together, and fold them all up, and seal the packet with several seals, writing their names on the outside of the packet across the seals, and then direct the packet to Kingsley B. Gibbs, Esquire, clerk of the superior court at St. Augustine, and write at the back, also, at the left corner the title of the suit, as mentioned at the head of the interrogatories—the packet may then be delivered to the clerk, by the commissioner.

*Interrogatories to Sophia Flemming.*

HEIRS OF JOHN FORBES
*vs.*
THE UNITED STATES. } Land Claim.

Interrogatories propounded in the above named cause, in behalf of the claimants, to Mrs. Sophia Flemming, to be answered before the Commissioner in the annexed commission named, viz: Kingsley B. Gibbs, Esquire.

First Interrogatory. Did you know John Forbes, late of East Florida, deceased? Do you know what children he left at his death, and whether his daughters have married since or before his death? Are these daughters now widows? Are these daughters his only children?

Second Interrogatory. Do you know the situation of Nassau river and of the little St. Mary's river? Are they not quite near to each other? What district of country, in Spanish times was called Nassau district? In what county is that district at the present time?

Smith for Claimants.

Cross Interrogatory. What is about the distance from little St. Mary's to Nassau river? Please state in relation to the matters enquired of in the foregoing interrogatories, what you know of your own knowledge only.

THO. DOUGLAS.
*United States Attorney.*

SUPERIOR COURT—*East Florida.*

HEIRS OF JOHN FORBES
*vs.*
THE UNITED STATES. } Land Claim, 10,000 acres.

The answers of Mrs. Sophia Flemming to the Interrogatories and Cross Interrogatories hereto annexed, the said Sophia Flemming being first duly sworn.

First Interrogatory. Witness answered: I knew John Forbes, deceased, in his life time. I know that he left two children at his death, daughters, one named Sophia, and the other Jane. Sophia was married before his death to Francis Dalcom. I don't remember whether Jane was married before or after his death, I rather think it was after. She married Mr. Depeyster. The eldest daughter, Sophia, is dead, leaving three or four children. I do not know whether Jane is a widow or not. These were the only children of Mr. John Forbes that I ever heard of.

Second Interrogatory. Witness answers: I know the situation of Nassau river and of little St. Mary's; I have heard they were near to each other. I do not know how far they are from each other. I do not know what district was called Nassau. I heard my father speak of his land in Nassau.

Cross Interrogatory. Witness answers: I don't know the distance from Nassau river to little St. Mary's river. I speak of my own knowledge.

SOPHIA FLEMMING.

Sworn to before me this 11th day of Sept. 1838.

K. B. GIBBS, *Commissioner.*

As commissioner named in the annexed commission, I do certify, that after being sworn myself, I did examine the witness named in said commission, under oath, and her answers to the interrogatories annexed to said commission, are truly and correctly herein set forth.

Given under my hand, this 11th day of September, A. D. 1838.

K. B. GIBBS, *Commissioner.*

And afterwards, before the superior court for the district of East Florida, holden at the court-house in the city of St. Augustine, at the term of July, in the year of our Lord one thousand eight hundred and thirty eight, to which term this cause, had come by regular continuance, to wit: on Tuesday the fifth day of said term, and the seventeenth of said month, the following entry of record was made in this cause, to wit:

*Cause Submitted.*

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| SOPHIA DALCOM AND JANE DEPEYSTER, ONLY SURVIVING CHILDREN AND HEIRS OF JOHN FORBES, deceased *vs.* THE UNITED STATES OF AMERICA. | Land Claim, 10,000 acres. |

This day came, as well the counsel for the said claimants, as the counsel for the United States, and the petition in this case having been amended, under the leave of the court, this claim was now submitted to the court for its decree therein.

And afterwards, at the same term of July in the year of our Lord one thousand eight hundred and thirty-eight, to wit, on Monday the tenth day of said term, and the seventeenth day of the month of September, the following entry of record was made in this cause, to wit:

*Decree of the Court.*

| | |
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| JANE DEPEYSTER AND SUSAN DALCOM, CHILDREN AND HEIRS OF JOHN FORBES, deceased *against* THE UNITED STATES OF AMERICA. | Land Claim, 10,000 acres. |

Whereas, Thomas Dalcom as executor of the estate of John Forbes, deceased, did, in pursuance of the act of Congress of the United States, entitled "An act supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida," and approved 23d day of May 1828, on the 20th day of May 1829, file his petition for the confirmation of certain land therein mentioned, in the clerk's office of the superior court for the eastern district of Florida. And afterwards, to wit, on the 27th day of July, 1835, the said petition was amended, under the leave of the court, by making the said Jane Depeyster and Susan Dalcom, children and heirs of John Forbes, deceased, the claimants before this court: and whereas, the attorney of the United States for this district did duly appear and file his answer to the said petition; and this cause having been heard, and evidence and argument of counsel as well on the part of the said claimants as on that of the United States having been offered and submitted to the court, and the court having examined the claim of the said petitioners, and the answer of the attorney of the United States, together with the evidence filed in this cause, and having maturely considered the same, doth *order, adjudge* and *decree* that this claim is *valid*, and that in accordance with the laws and customs of Spain, and under and by virtue of the late "treaty of amity, settlement and limits between the United States of America and the King of Spain," ratified by the President of the United States on the 22d of February, 1821, and under and by virtue of the laws of nations and of the United States. It

is hereby *confirmed*, *adjudged*, and *decreed* unto the said claimants to the extent for the number of acres, and at the place, as in the memorial of the said John Forbes, and the decree of the Governor thereon is set forth, to wit: "Ten thousand acres of land in the district or bank of the river Nassau.

And afterwards, before the superior court for the district of East Florida, holden at the court-house in the city of St. Augustine, at the term of October, in the year of our Lord one thousad eight hundred and thirty eight, to wit, on Wednesday the second day of said term, and the tenth day of said month, the following entry of record was made in this cause, to wit:

*Appeal.*

THE UNITED STATES OF AMERICA *ads.* THE HEIRS OF JOHN FORBES, deceased. } Land Claim, 10,000 acres.

This day came, as well the attorney of the United States for this district, as the solicitor for the said claimants, and the said attorney of the United States moved the court that an appeal be granted, in this case, on behalf of the said United States, from the decree of this court to the Supreme Court of the United States; and that a citation, with notice of said appeal may be forthwith issued by the clerk of this court to the appellees, and that the same may be served by the marshal of said district, upon the said appellees or their solicitor or agent, and returned to this court within thirty days from the issuing thereof. All of which is ordered accordingly.

In pursuance of the above order, a citation of appeal was duly issued in this case; and which said citation, together with the return of the marshal thereon, are in the words and figures following, to wit:

*Citation of appeal and return.*

In the name and by the authority of the United States of America.

To Jane Depeyster and Sophia Dalcom, children and heirs of John Forbes, deceased, or to their Agent, Attorney, or Solicitor, Greeting.

You are hereby cited and admonished that an appeal has been taken on the part of the United States from the decree of the superior court for East Florida, to the Supreme Court of the United States, in a certain claim to ten thousand acres of land wherein you, the said Jane Depeyster and Sophia Dalcom, children and heirs as aforesaid are claimants, and the said United States respondent, and that the record in said cause will be forwarded to the said Supreme Court, to be placed on the docket of said court at the next term thereof, to be holden on the second Monday of January next.

[REC. No. 43—3.]